

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

J. BARRIOS, et al.,

Defendants.

Case No. 1:23-cv-00054-HBK (PC)

ORDER GRANTING PLAINTIFF'S MOTION
FOR VOLUNTARY DISMISSAL UNDER
FED. R. CIV. P. 41(a)(2) OF CERTAIN
DEFENDANTS¹

(Doc. No. 96)

On November 4, 2024, Plaintiff Durrell Puckett, a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action, filed a pleading titled "Dismissing Lt. J. Barrios and C/O Gaxiola" which the Court construes as a Motion for Voluntary Dismissal of Defendants Barrios and Gaxiola pursuant to Federal Rule of Civil Procedure 41(a)(2). (Doc. No. 96, "Motion"). On November 18, 2024, Defendants filed a Response indicating they have no opposition to the Motion. (Doc. No. 102). The undersigned recommends the District Court grant the Motion.

Plaintiff currently proceeds on his operative Third Amended Complaint asserting Eighth Amendment conditions of confinement claims against Defendants Barrios, Gaxiola, Hernandez,

¹ All parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c)(1). (Doc. No. 104).

1 White, Baraona, and T. Campbell. (*See* Doc. Nos. 72, 73). Plaintiff's Motion in relevant part
2 states:

3 Due to past good report [sic] with these two individuals I feel
4 obligated to dismiss them from this suit with prejudice. I will not
5 further hold them liable for their subordinate[s'] actions and wrong
6 doing [sic].

7 (Doc. No. 96 at 1). Because Defendants Barrios and Gaxiola have already answered Plaintiff's
8 TAC, the Court liberally construes Plaintiff's pleading as a Motion for Voluntary Dismissal under
9 Rule 41(a)(2). *See* Fed. R. Civ. P. 41(a)(2) ("Except as provided in Rule 41(a)(1), an action may
10 be dismissed at the plaintiff's request only by court order, on terms that the court considers
11 proper"); *see also Thacker v. AT&T Corp.*, 2021 WL 3206202, at *2 (E.D. Cal. July 29, 2021),
12 report and recommendation adopted, 2021 WL 4168533 (E.D. Cal. Sept. 14, 2021).

13 A plaintiff may voluntarily dismiss any defendant or claim without a court order by filing
14 a notice of dismissal before the opposing party answers the complaint. Fed. R. Civ. P. 41
15 (a)(1)(A)(i). After a party has answered the complaint, a plaintiff may only dismiss a case or
16 individual defendants with the court's approval. *See* Fed. R. Civ. P. 41(a)(2).

17 Here, because Defendants Barrios and Gaxiola have answered Plaintiff's TAC, (*see* Doc.
18 No. 83), Plaintiff may not voluntarily dismiss the complaint without court approval. A district
19 court has broad discretion to grant a motion for voluntary dismissal under Rule 41(a)(2).
20 *Hamilton v. Firestone Tire & Rubber Co. Inc.*, 679 F.2d 143, 145 (9th Cir. 1982). The court
21 "should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show
22 that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975
23 (9th Cir. 2001). Defendants indicate they have no opposition to the Motion. (Doc. No. 102 at 2).
24 Nor can the Court conceive of any prejudice to Defendants Barrios and Gaxiola from granting
25 Plaintiff's Motion, particularly given that the dismissal is with prejudice and they would not be
26 forced to defend against the instant claims in a future suit. *See Smith v. Lenches*, 263 F.3d 972,
27 976 (9th Cir. 2001) ("[t]hat the district court here dismissed, with prejudice, the federal claims so
28 they cannot be reasserted in another federal suit only strengthens our conclusion that the dismissal
caused no legal prejudice and was not an abuse of discretion").

Accordingly, it is hereby **ORDERED**:

1. Plaintiff's Motion for Voluntary Dismissal (Doc. No. 96) is **GRANTED**.
2. Defendants Barrios and Gaxiola are **DISMISSED with prejudice**.
3. The Clerk of Court shall update the docket to reflect the termination of Defendants Barrios and Gaxiola from this action.

Dated: November 20, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE